

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MONTANA
HELENA DIVISION

DEWAYNE BEARCHILD,

Plaintiff,

vs.

KRISTY COBBAN, SGT. PASHA,
SAM JOVANOVIH, TOM BLAZ,
DAN JOHNSON and C/O
SHASHLINGE,

Defendants.

CV 14-00012-H-DLC-JTJ

ORDER AND FINDINGS AND
RECOMMENDATIONS OF UNITED
STATES MAGISTRATE JUDGE

Pending is Plaintiff Dewayne Bearchild's "Objection and Request for Clarification and Reconsideration" (Doc. 121), which the Court construes as a motion to dismiss Defendant Tom Blaz, and Defendant Blaz's Motion to Extend Pretrial Motions Deadlines. (Doc. 155.) The motion to dismiss Defendant Blaz should be granted. In light of this recommendation, Defendant Blaz's motion to extend the pretrial motions deadline will be denied as moot.

Rule 41(a)(2) of the Federal Rules of Civil Procedure allows the Court to dismiss a case at the request of the plaintiff "on the terms that the court considers proper." Mr. Bearchild indicates in his "objection" that Defendant Blaz does not need an extension of time to file pretrial motions because "Plaintiff Bearchild now

drops Defendant Blaz as a defendant in this case.” (Doc. 121 at 4.) In the response to Mr. Bearchild’s “objection,” counsel represents that all Defendants concur in the dismissal of Defendant Blaz; Defendant Blaz requests that he be dismissed with prejudice in light of the considerable time and effort associated with defending the case to this juncture. (Doc. 131 at 8-11.) In his reply brief, Mr. Bearchild again agrees to remove Defendant Blaz as a defendant but requests that the 120-day extension of time given to Defendant Blaz to file pretrial motions (Doc. 109) be voided. (Doc. 141 at 1.) Although Mr. Bearchild agrees to dismiss Defendant Blaz, he requests “for his own curiosity” documentation to verify that Defendant Blaz is as seriously ill as represented.

There being no objection to the dismissal of Defendant Blaz, Mr. Bearchild’s motion should be granted and Defendant Blaz should be dismissed with prejudice. Mr. Bearchild’s requests to void the prior extension and/or for documentation of Defendant Blaz’s medical condition are improper and will be denied.

Based upon the foregoing, the Court issues the following:

ORDER

1. Defendant Blaz’s Motion to Extend Pretrial Motions Deadlines (Doc. 155) is **DENIED AS MOOT** in light of the following recommendations.

2. Mr. Bearchild's request to void the prior extension of time to Defendant Blaz (granted in Doc. 109) and his request for documentation of Defendant Blaz's medical condition are **DENIED**.

Further, the Court issues the following:

RECOMMENDATIONS

Mr. Bearchild's "Objection and Request for Clarification and Reconsideration" (Doc. 121), which the Court has construed as a motion to dismiss Defendant Tom Blaz, should be **GRANTED**. Mr. Blaz should be **DISMISSED WITH PREJUDICE**, and the Clerk of Court should be directed to terminate Mr. Blaz as a Defendant in this matter.

NOTICE OF RIGHT TO OBJECT TO FINDINGS & RECOMMENDATIONS AND CONSEQUENCES OF FAILURE TO OBJECT

The parties may file objections to these Findings and Recommendations within fourteen (14) days after service (mailing) hereof.¹ 28 U.S.C. § 636. Failure to timely file written objections may bar a de novo determination by the district judge and/or waive the right to appeal.

This order is not immediately appealable to the Ninth Circuit Court of

¹ As this deadline allows a party to act after the Findings and Recommendations is "served," it falls under Fed.R.Civ.P. 6(d). Therefore, three (3) days are added after the period would otherwise expire.

Appeals. Any notice of appeal pursuant to Fed.R.App.P. 4(a) should not be filed until entry of the District Court's final judgment.

DATED this 29th day of June, 2016.

/s/ John Johnston
John Johnston
United States Magistrate Judge